Russell, 166 Mass. 14; see 10 HARVARD LAW REVIEW, 119), the Legislature has tried again. That it should do this so promptly suggests the spirit of Mr. Theodore Roosevelt's contemporary in the New York Legislature who "did his best not to allow the Constitution to come between friends"; but it has this difference, that a real and satisfactory attempt has been made to avoid the faults which vitiated the earlier law, and the result seems to be a preference which can honorably be advocated and justified. And such is the opinion of the majority of the Supreme Judicial Court which the Legislature has obtained on the validity of the new law (44 N. E. Rep. 625).

"The General Court may have been of the opinion," say the majority of the court, "that a person who had served in the army . . . would be likely to possess courage, constancy, and habits of obedience and fidelity, which are valuable qualifications for any public office or employment." Whether this is in fact the intention, and will in fact be the result of the law, are questions which are not for any court to decide, and questions which the majority rightly do not take up. It would seem that the minority (Allen, Lathrop, and Barker, JJ.) put it too strongly when they say that the new law (chapter 517 of 1896) "involves a compulsory disregard of actual fitness." The distinguishing and saving difference of the new law is that every appointee, be he veteran or no, must pass his examination; he must exceed that minimum which the Civil Service Rules fix as a sufficient test of knowledge. Then, and then only, the very arguable proposition that his service may help to fit him is to come into play. Whether or no one approves such a law, it would seem to be well within the bounds of any liberal interpretation of the Massachusetts Constitution. There is indeed one section of the new law (§ 3) which would make it possible for an appointing officer deliberately to disregard his duty; but the court having determined that with a proper construction it merely leaves the responsibility with him, without requiring him to consider anything but capacity, the section is as easy to sustain as the rest, whatever loopholes it may have been meant to leave.

CERTAINTY AS A FORMAL REQUISITE OF NEGOTIABLE PAPER. — Two cases recently decided on the same day by the Supreme Court of Michigan afford excellent illustrations of the sort of certainty that is to-day regarded as requisite in negotiable paper. In *Brooke* v. *Struthers*, 68 N. W. Rep. 272, a provision in a mortgage, that, if the mortgagor should leave any taxes unpaid for thirty days, such taxes and the principal and interest of the note accompanying the mortgage, should at once become payable, was held to render the note non-negotiable. In *Wilson* v. *Campbell*, Ibid. 278, under similar circumstances, the note was held to be negotiable, because, at the time of its execution, there was a statute in existence requiring the mortgagor to pay the taxes, and hence the stipulation in the mortgage added nothing to the amount payable on the note.

That a note and a mortgage executed at the same time must be construed together, is well settled. Daniel on Negotiable Instruments, § 156. The two cases are distinguishable only on the ground that the element of uncertainty in the amount payable on the note, which existed in the first case, was not present in the second. In uncertainty of the time of payment, the cases are alike. As an original question of princi-

ple, this uncertainty should have rendered both notes non-negotiable. When the time of maturity depends on extraneous facts, and cannot be ascertained from the face of the note, difficulties arise which are readily apparent. But these difficulties have had little or no weight in the courts of America and England. Such common instruments as demand notes are open to objection on this ground. Analogous to the Michigan cases under discussion is a series of decisions, beginning with *Carlon* v. *Kenealy*, 12 M. & W. 139, and including the recent cases of *Merrill* v. *Hurley*, 62 N. W. Rep. 958 (S. Dak.), and *Stark* v. *Olsen*, 63 N. W. Rep. 37 (Neb.), which establish that where the principal or interest of a note is made payable in instalments, with a provision that the face of the note shall become due in case of default in the payment of any instalment, the note is not rendered non-negotiable. It would seem, therefore, to be too late to object to a note on the ground that inspection will not reveal whether or not it is overdue. The doctrine that it is sufficient if the instrument is payable at a time that must certainly come, is now firmly established in our law. There is, to be sure, one class of cases, of which *Smith* v. *Marland*, 59 Iowa, 645, is an example, that seem in reality inconsistent with this. But the doctrine is not expressly repudiated, for the courts rest their decisions on the ground of uncertainty in the amount payable on the notes. Uncertainty of this sort is as fatal to negotiability to day as ever, notwithstanding the recognition of notes providing for payment of attorney's fees, cost of collection, etc. Those cases where the additional promise is merely to facilitate collection go as far as is justifiable. Although *Brooke* v. *Struthers*, *supra*, has been criticised as resting on narrow grounds, and as being at variance with modern business methods, it seems to have been an entirely correct decision under the present state of the law.

COMMON LAW PLEADING. — "And, so long as written pleadings remain, the best masters of the art will be they who can inform the apparent license of the new system with that spirit of exactness and self-restraint which flows from a knowledge of the old." Thus, in his address to the American Bar Association at Saratoga last summer, Sir Montague Crackenthorpe, Q. C., spoke with reference to the utility of the study of common law pleading, swept away in the wave of legal reform, which resulted in the English Judicature Act of 1873. Since that time the matchless precision of the old system, the growth of centuries of legal experience, has been replaced by a looseness of which the chief effect is to put a premium on ignorance and sloth. Common law pleading was the mill of justice in which an undefined, obscure mass of fact was ground down to clear and distinct issues. All the parts of this admirable machinery, each logically developed to this single end, worked in harmony to its accomplishment. In consequence, the court could ascertain the steps of law by reference to an intelligible record, the counsel each knew exactly what he must stand ready to prove, and the jury were required to hear evidence only on the definite issue of fact reached.

In the hands of those who understood it, the system was infallible in attaining the purpose for which it existed. If all who brought causes to trial had possessed a proper acquaintance with this branch of law and a reasonable mental alertness, it would never have been hinted that pleading was a means of turning the decision of a question from "the very